

SN 10/828/392
Inventor: McKee

REMARKS/ARGUMENTS

The Examiner suggests that the instant application includes four distinct species of the claimed invention and has required the applicant to elect one of said species for further prosecution. In response to the requirement for an election of species, the applicant hereby elects the specie identified as Species A including Claims 1, 6-8, 11, 12, 16, and 27. The applicant traverses the requirement for the reasons set forth below.

The Applicant believes the species included within the instant application are clearly obvious in view of one another and election should not be required. See 808.01(a) of the MPEP. In addition, the Applicant has previously responded to an action on the merits, for this action the Examiner searched the entire application which included all of the current species and no restriction was required at that time. Moreover, 35 U.S.C. 803 states "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions". For the first office action the Examiner clearly examined the entire application without suggesting or requiring the applicant to elect a single species. The Examiner has not identified separate classifications for the different species. Nor has the Examiner

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identified separate status of the species in the art. Still yet, the Examiner has not identified any different fields of search for the claimed invention. The Examiner should note, a proper restriction requirement under 35 U.S.C. 803(B) requires "a serious burden on the Examiner" (see MPEP 803.02, 806.04(a)-806.04(i), 808.01(a), and 808.02. In a phone conference held on 3/10/05 between the Examiner and the prosecuting attorney. The Examiner was asked if a new search was required to further prosecute the application, the Examiner's reply was no. Clearly, if multiple searches are not required to further prosecute this application there is no "serious burden" to be imposed on the Examiner and the application should be prosecuted as it is, without an election requirement.

From the applicant's point of view, the Examiner has not provided any reason or example to support his conclusion that an election of species is required to further examine this application. The application has already been searched and the Examiner has stated that an additional search is not required to further prosecute the application. The Examiner has not explained or demonstrated that he would suffer any burden by continuing to examine the application without requiring the election. For all of these reasons the entire application including all claims should

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be examined in its entirety without the election requirement.

In addition, Claims 27 and 28 have been added to the application. Claim 27 is believed to be a generic Claim, pursuant to 37 C.F.R. 1.146 and MPEP 809.02(c) the Examiner should examine a reasonable number of species without an election requirement.

In response to the Office Action of Sep. 13, 2004, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

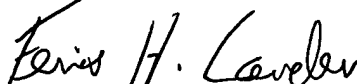
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SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

If there are any fees due in connection with the filing of this response, the Office is invited to charge Applicant's Deposit Account No. 13-0439.

Respectfully submitted,



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